

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:92-CR-114-BR-3

UNITED STATES OF AMERICA,

v.

LEROY ANGLOSON STUART,

Defendant

ORDER

This matter is before the court on defendant's letter dated 14 March 2019, which the court construes as a motion to rescind the withdrawal of his authorized, successive 28 U.S.C. § 2255 motion. (DE # 105.) The government did not file a response.

In its 15 January 2019 order, the court recognized that defendant, through court-appointed counsel, had withdrawn his authorized, successive 28 U.S.C. § 2255 motion, which asserted a claim based on the decision in Johnson v. United States, 135 S. Ct. 2551 (2015). (DE # 104, at 2.) The court then disposed of defendant's *pro se* motions to vacate and to amend the record. (Id. at 2-4.)

Defendant now requests that the court "reconsider" the withdrawal of the § 2255 motion counsel filed on his behalf and rule on the merits of the § 2255 motion so he may appeal, should the court rule against him. (DE # 105, at 2.) Absent any apparent prejudice to the government, the court **ALLOWS** defendant to rescind his withdrawal. The Clerk is **DIRECTED** to reopen defendant's habeas corpus proceeding, Case No. 5:16-CV-593-BR, and to correct the docket to reflect that his § 2255 motion, (DE # 80), and the government's motion to dismiss the § 2255

motion, (DE # 100), (which the government filed before defendant withdrew the § 2255 motion) are pending. Along with a copy of this order, the Clerk is also DIRECTED to serve defendant with copies of the government's motion to dismiss and memorandum in support, (DE ## 100, 101). Defendant shall file any response to the motion to dismiss within 30 days of the date this order is filed. **Defendant is warned if he fails to respond, the court may grant the government's motion and dismiss his § 2255 motion.**

This 22 May 2019.



W. Earl Britt

Senior U.S. District Judge